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## BOOK REVIEWS.

ROBERT W. SKINNER, JR., *Editor-in-Charge.*

THE LAW OF THE FEDERAL AND STATE CONSTITUTIONS OF THE UNITED STATES. By FREDERIC JESUP STIMSON, Boston: The Boston Book Co. 1908. pp. xxii, 386.

Professor Stimson has done a valuable piece of work in this latest volume in the field of legal and constitutional investigation. Its importance perhaps does not lie largely in what might be called the original, historical or critical portion. These are not extensive and perhaps it is not too severe to say that parts of the historical treatment do not carry conviction from the standpoint of accuracy and certainty. The work does, however, possess certain qualities highly desirable to the student which it is the purpose of this review briefly to point out.

In the first place the author in this work follows out his idea, appearing in his book "American Constitution," viz., that Constitutional Law is a "living science." It has become much the mode in different fields of social science to emphasize clearly two distinct views of social life, the "static" and the "dynamic." For example, this has been done in the science of Economics by eminent scholars, like Professor J. R. Clark, in a most helpful and enlightening fashion. Fundamental in such a treatment is an analysis of those basic principles underlying social life as preparatory to the further discussion of the change wrought in this static state through those mighty dynamic forces which with the passing years reveal themselves. Gradually through the influences of such students as Professor Stimson we are coming more and more to place proper emphasis upon these great changes through which legal analysis must make its way. A most fruitful task it has certainly proved. To the study of the general principles in the abstract such eminent students of the Constitution as Cooley, Dicey and others have brought the services of their extraordinary powers. One finds, however, in the works of Mr. Stimson the appreciation of the social side of life and the transforming influences of economic development upon the letter and the spirit of the law. It is, no doubt, a fruitage of this enlarged view of the mission and sphere of law that is seen in the decisions of the court, see *Mueler v. Oregon* (1908), 28 Sup. Ct. Rep. 324, where the legal, technical factors have yielded, to an extent at least, to that growing social necessity thrust upon us by economic change. Such studies help to make real the well-known proposition that constitutional law is a "living science." To the realization of this desirable end Professor Stimson's work lends valuable aid. In his chapters on "The Right to Liberty," "The Right to Labor and Trade," "Chancery and the Injunction Order," this method and theory have been followed with results most gratifying.

A second very commendable feature of his works is the great pains displayed in analyzing the constitutions, state and national, and the vast amount of data there furnished as to the actual statement of these instruments touching the general sub-divisions of constitutional law as the Bill of Rights, political provisions, powers to legislate, etc. This work is of real value to the more general student at least and the method is certainly

valuable to all. Equally important is the author's judicial position taken on such live questions as Injunction—an attitude which tends to call upon his readers, radical though they may be, for the sober second thought on all these great questions, which Dr. Von Holst once called the saving feature in a democracy.

The book under review is divided into two main parts, the first of which deals with the historical character of our institutions, the second setting forth in a succinct, if not always in the most readable, form the provisions of the leading constitutional sources on the more important questions.

If adverse criticism were to be passed it might lie in this, that the historical portion dealing with extensive areas of English constitutional history appears rather sketchy, and does not perhaps make clear enough that many of the steps in this development are controverted points among the greatest scholars of English legal and political history. Very few of these questions can be really considered as settled. The fact that it is a broad historical essay tends, of course, to lessen the force of this objection. The work is such as should appeal to legal students on both sides of the water and should prove of value to students of the law in either its broader or more technical aspect.

THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION. By FREDERICK H. COOKE. New York: Baker, Voorhis & Co. 1908. pp. xcii, 302.

The profession is indeed to be congratulated upon the timely appearance of this well-considered and carefully argued work, dealing with a subject which has in the last two decades given rise to perhaps the most important and conspicuous legal controversies within the domain of Constitutional Law and Political Economy. At a time when the outlawry of the individual by administrative proclamation and without due process of law, and when "the disparagement of the courts" in the endeavor to undermine their position as the highest interpreters and defenders of the constitutional rights and immunities of the individual, would seem to be looked upon by the public as an executive function and as an evidence of large statesmanship, it is well that the legal profession turn anew to the study of the Constitution and learn from that great bulwark of human liberty the "lessons of the fathers."

The author has well performed the difficult task undertaken,—to reconcile the decisions which have grown up "in a sporadic and haphazard fashion" and, amid the "codeless myriad of precedent," to discover "the underlying unifying principles" which were largely inadequately comprehended, or entirely lost sight of by the courts. His definition of the word "commerce," as used in the constitutional provision in question, is to be commended in the present state of the law, but will doubtless have to be abandoned in the progressive development of the subject, which it is apparent is taking place, and which will be accelerated in the years to come, as the importance of the Commerce Clause of the National Constitution becomes even more manifest.

The author's theses are as follows: Commerce as used in the Commerce Clause of the Constitution is "transportation, including that of person, tangible property and of intelligence." The regulation of interstate and foreign commerce by the Federal Government is not a concurrent, but an exclu-